UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

WESLEY CORBERA, as executor of the estate of Harrison Carmel Breedlove, deceased,

Plaintiff,

v.

HENRY JAMES TAYLOR, COUNTY OF SHASTA, and DOES 1 through 10,

Defendants.

No. 2:21-cv-01998 WBS KJN

MEMORANDUM AND ORDER RE: DEFENDANT COUNTY OF SHASTA'S MOTION TO DISMISS

----oo0oo----

Plaintiff Wesley Corbera, as personal representative of the estate of decedent Harrison Carmel Breedlove and trustee for the estate of decedent's mother Patricia Breedlove, brought this § 1983 action against defendants Henry James Taylor and the County of Shasta. Plaintiff seeks survival and wrongful death damages for an alleged violation of substantive due process under the Fourteenth Amendment. (First Am. Compl. ("FAC") (Docket No. 1).) Defendant County of Shasta now moves to dismiss plaintiff's

entire First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket No. 32 ("Mot.").)

## I. Factual and Procedural Background[1]

Defendant Henry James Taylor was a deputy at the Shasta County Sheriff's Department. (FAC ¶ 26.) On or about November 6, 2019 at 6:31 p.m., the Shasta Area Safety Communications Agency received a 911 call reporting that individuals who were only authorized to be at a vacant house during daylight hours were there after dark. (Id. ¶ 38.) The caller stated, "I don't think it's an emergency." (Id. ¶ 39.) At 7:51 p.m.--over an hour later--a Shasta County Sheriff's deputy was assigned to respond to the call, which dispatch classified as a "possible 602," indicating misdemeanor trespassing. (Id. ¶ 41.) Around the same time, a second deputy volunteered to proceed to the house as backup. (Id. ¶ 42.) Neither deputy considered the call an emergency. (Id. ¶¶ 41-42.)

At 7:53 p.m., a dispatcher inquired whether defendant Taylor was available to act as additional backup, and Taylor accepted the assignment. (Id. ¶¶ 43-44.) On his way to the house, Taylor stopped at a red light for approximately one minute. (Id. ¶ 57.) He thereafter turned onto State Route 299 and accelerated his vehicle, reaching speeds of over 100 miles per hour in an area with a posted speed limit of 55 miles per hour. (Id. ¶ 58.) Taylor did not follow the statutory and regulatory requirements for responding "Code 3," under which law enforcement officers are permitted to violate traffic regulations

[1] All facts recited herein are as alleged in the First Amended Complaint unless otherwise noted.

in order to more quickly respond to an emergency. (See id. ¶¶ 19-20, 45-46, 53-54.) Specifically, Taylor did not inquire whether the call was an emergency and did not inform the dispatcher he intended to respond on a "Code 3" basis. (Id. ¶¶ 45-46, 53-54.) He did not turn on his vehicle's flashing lights or sirens. (Id. ¶ 56.)

After passing a "Deer Crossing" sign on Route 299, Taylor struck and killed a deer while traveling over 109 miles per hour. (Id. ¶ 46.) Taylor lost control of the vehicle and crossed the center line into oncoming traffic. (Id. ¶¶ 47-48.) At approximately 8:00 p.m., Taylor, driving at over 105 miles per hour, struck an oncoming vehicle in which Harrison Breedlove was a passenger. (Id. ¶¶ 50-51.) Breedlove later died due to injuries sustained during the collision. (Id. ¶ 52.) Taylor stated in an interview after the incident that his conduct was justified by a need to catch up to the deputies he was backing up. (Id. ¶ 71.)

Plaintiff filed a negligence action against defendants in Shasta County Superior Court in August 2020. (See Ex. A to Decl. of Nicholas Pyle (Docket No. 32-2).) Criminal proceedings were also brought against defendant Taylor. (See Ex. D to Decl. of Nicholas Pyle (Docket No. 32-5).) The state court case has been stayed pending resolution of the criminal proceedings.[2] (Id.)[3]

[2] Despite the pending criminal action, defendant has not requested that this case be stayed.

[3] To the extent that the parties request that the court take judicial notice of the existence of various filings in plaintiff's state court action (Docket No. 32-6) and the criminal charges filed against defendant Taylor (Docket No. 34-2), the

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal when the plaintiff's complaint fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). "A Rule 12(b)(6) motion tests the legal sufficiency of a claim." The inquiry before the court is whether, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, the complaint has alleged "sufficient facts . . . to support a cognizable legal theory," id., and thereby stated "a claim to relief that is plausible on its face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Courts are not, however, "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001); see Bell Atl. Corp., 550 U.S. at 555. Accordingly, "for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

III. Discussion

Although § 1983 is not itself a source of substantive rights, it provides a cause of action against any person who, under color of state law, deprives an individual of federal

---

requests are GRANTED. See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998). However, those documents do not ultimately affect the court's conclusions.

constitutional or statutory rights. 42 U.S.C. § 1983; Graham v. Connor, 490 U.S. 386, 393–94 (1989). Here, the federal right that plaintiff seeks to vindicate stems from the substantive component of the Fourteenth Amendment's Due Process Clause.

Substantive due process "forbids the government from depriving a person of life, liberty, or property in such a way that 'shocks the conscience' or 'interferes with the rights implicit in the concept of ordered liberty.'" Corales v. Bennett, 567 F.3d 554, 568 (9th Cir. 2009) (quoting United States v. Salerno, 481 U.S. 739, 746 (1987)) (internal citation omitted).

There are two culpability standards that dictate whether conduct sufficiently "shocks the conscience" to establish a due process violation. See Porter v. Osborn, 546 F.3d 1131, 1137 (9th Cir. 2008). Defendant argues that the "intent to harm" standard controls here, while plaintiff argues that the lower "deliberate indifference" standard applies.

In County of Sacramento v. Lewis, 523 U.S. 833 (1998), the Supreme Court considered a substantive due process claim premised on a police car chase that resulted in the plaintiff's death. The officer engaged in a high-speed pursuit of a motorcycle, which reached speeds up to 100 miles per hour. Id. at 836–37. In determining whether the officer's conduct "shocked the conscience," the court rejected the deliberate indifference standard applied by the lower court. See id. at 854. The court held that "high-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability" for a deprivation of substantive due process under the

Fourteenth Amendment. See id.

The Lewis court likened a police officer in a high-speed chase to the prison officials responding to a prison riot in Whitley v. Albers, 475 U.S. 312 (1986). In Whitley, the officers were not liable under the Eighth Amendment for a shooting that occurred while responding to the riot. Id. at 326. The Lewis court reasoned that both a police pursuit and a prison riot necessitate "fast action" and require officers to balance "obligations that tend to tug against each other." Lewis, 523 U.S. at 853. Officers in each scenario "are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made 'in haste, under pressure, and frequently without the luxury of a second chance.'" Id. (quoting Whitley, 475 U.S. at 320). In such circumstances, the higher intent to harm standard is appropriate. See id.

The Lewis court contrasted these circumstances with DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189 (1989), where prison officials faced Eighth Amendment liability under a deliberate indifference standard for failing to provide medical care to prisoners. Lewis, 523 U.S. at 851-52. There, officers "[had] time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations." Id. at 853. In such cases where "actual deliberation is practical," "deliberate indifference can rise to a constitutionally shocking level." See id. at 851-52.

The Ninth Circuit has applied Lewis's reasoning to a variety of cases involving police conduct, indicating that the intent to harm standard applies whenever an officer confronts an

emergency requiring fast action in the face of competing obligations. See Bingue v. Prunchak, 512 F.3d 1169, 1176 (9th Cir. 2008) (because high-speed chases are by their nature "genuine emergenc[ies]" requiring officers to "make repeated split-second decisions about how best to apprehend the fleeing suspect in a manner that will minimize risk to their own safety and the safety of the general public," an intent to harm standard applies and officer did not violate substantive due process rights by causing collision during high-speed chase); Porter, 546 F.3d at 1139 (because Lewis and Ninth Circuit precedent "require [that the purpose to harm standard apply] when an officer encounters fast paced circumstances presenting competing public safety obligations," officer did not violate substantive due process rights by shooting suspect during five-minute, "quickly evolving and escalating" altercation); Moreland v. Las Vegas Metro. Police Dep't, 159 F.3d 365, 372–73 (9th Cir. 1998) (under Lewis, officers "did not violate the plaintiffs' substantive due process rights to family association when [they] accidentally shot and killed [an alleged bystander], because the officers were responding to the extreme emergency of public gunfire and did not intend to commit any harm unrelated to the legitimate use of force necessary to protect the public and themselves").

The Ninth Circuit has also explained that, based on Lewis, the key consideration in determining whether the deliberate indifference standard applies to a substantive due process claim is whether "'actual deliberation is practical.'" See Porter, 546 F.3d at 1137 (quoting Lewis, 523 U.S. at 851); Moreland, 159 F.3d at 372 (same); Zion v. Cnty. of Orange, 874

F.3d 1072, 1077 (9th Cir. 2017) (same); Wilkinson v. Torres, 610 F.3d 546, 554 (9th Cir. 2010) (same).

In Bingue v. Prunchak, 512 F.3d 1169 (9th Cir. 2008), the Ninth Circuit considered a case involving a high-speed police pursuit of a vehicle. Following Lewis, the Bingue court held that the intent to harm standard applies to "all high-speed chases" involving police officers and rejected a distinction between "emergency" and "non-emergency" police chases. Id. at 1170–71, 1176 (emphasis added). The court reasoned that "drawing such an arbitrary distinction between 'emergency' and 'non-emergency' situations discounts the split second decisions an officer must make when deciding whether to engage in a high-speed chase. In such circumstances, officers must operate under great pressure and make repeated split-second decisions about how best to apprehend the fleeing suspect in a manner that will minimize risk to their own safety and the safety of the general public." Id. at 1176. Further, "[t]he sheer velocity of a high-speed chase necessarily converts each situation into a genuine 'emergency.'" Id. The Bingue court also followed Ninth Circuit precedent requiring consideration of whether actual deliberation was practical, reasoning that the deliberate indifference standard was inappropriate because "[a]n officer attempting to apprehend a suspect fleeing at high speed" has "no time for reflection and precious little time for deliberation." See id.

Relying on Bingue, defendant argues that the court should mechanically apply the intent to harm standard here. However, Bingue clearly limited its reasoning to cases involving high-speed pursuits, which are by their nature considered

emergencies. See 512 F.3d at 1170-71, 1176. See also Lewis, 523 U.S. at 834 ("rules of due process are not subject to mechanical application in unfamiliar territory," but rather require "an exact analysis of context and circumstances").

Defendant also argues that this court's prior decision in Suit v. City of Folsom supports its position. Suit was a straightforward application of Bingue to a high-speed car chase and is similarly inapposite. See Case No. 2:16-00807 WBS, 2016 WL 6696060, at *3 (E.D. Cal. Nov. 14, 2016) (applying intent to harm standard in case involving police car chase of a suspect that was driving "reckless[ly]" because "Ninth Circuit precedent . . . holds the intent to harm standard applies to all high-speed chases") (citing Bingue, 512 F.3d at 1177) (emphasis added). Defendant emphasizes that the car chase in Suit occurred after the officer pulled over the suspect on a "cold" misdemeanor. See id., at *1. However, under Bingue, it is not the underlying reason for the chase that matters, but rather the fact that the officer is engaging in a chase at all, which is necessarily preceded by a quick decision to engage. See Bingue, 512 F.3d at 1167.

In contrast to Bingue and Suit, the instant case involves a police officer merely driving, not engaging in a car chase. The Ninth Circuit has contrasted the high-speed chases contemplated by Bingue, to which the intent to harm standard applies, with the type of non-emergency situations discussed in Lewis that are appropriately considered under a deliberate indifference standard. See Porter, 546 F.3d at 1139.

To determine which standard to apply, the court must

evaluate whether "actual deliberation is practical" where a police officer drives a vehicle in a non-emergency, non-pursuit context, such that the deliberate indifference standard applies. See id. at 1137. While the parties have not identified, nor has the court found, any binding on-point authority, other circuits have confronted this question. In Browder v. City of Albuquerque, the Tenth Circuit--in an opinion authored by then-Judge Gorsuch--applied the deliberate indifference standard in a case involving a collision caused by an officer who sped and ran red lights while neither in pursuit nor facing an emergency. 787 F.3d 1076, 1080-81 (10th Cir. 2015) (Gorsuch, J.). The court reasoned that while "Lewis held specific intent may be required to suggest arbitrary or conscience-shocking behavior in cases where the officer has been asked to respond to emergencies of citizens in need," it "never suggested that such a demanding form of mens rea is necessary or appropriate . . . in cases where the officer isn't pursuing any emergency" such that "forethought is feasible." See id. at 1080-81. Affirming the district court's denial of a motion to dismiss, the court found that, accepting the plaintiff's allegations as true, the officer's conduct constituted deliberate indifference. See id. at 1077, 1082.

Both the Fourth and Seventh Circuits came to similar conclusions.[4] In Flores v. City of South Bend, the Seventh

[4] The parties also discussed Sauers v. Borough of Nesquehoning, 905 F.3d 711 (3d Cir. 2018). However, this case is not on point. Sauers involved an officer pursuing a suspect in his vehicle (i.e., a car chase). See 905 F.3d at 715. The differences noted by defendant between the Third Circuit's reasoning in Sauers and the Ninth Circuit's decision in Bingue concerning whether emergency/non-emergency distinctions are appropriate in cases involving car chases, see id. at 718, are therefore irrelevant here.

Circuit applied the deliberate indifference standard where the officer's conduct in driving between 78 and 98 miles per hour in an area with a posted speed limit of 30 miles per hour was "unjustified by any emergency." 997 F.3d 725, 730 (7th Cir. 2021). The court reasoned that "[i]dentical behavior considered reasonable in an emergency situation" might nonetheless establish liability "when state actors have time to appreciate the effects of their actions." Id. at 729 (citing Lewis, 523 U.S. at 850). As such, the officer's conduct as alleged by the plaintiff constituted deliberated indifference and denial of a motion to dismiss was appropriate. See id. at 734.

In Dean v. McKinney, the Fourth Circuit applied the deliberate indifference standard in a case involving an officer who was driving 38 miles per hour over the speed limit while responding to a non-emergency call. 976 F.3d 407, 412, 415-16 (4th Cir. 2020). The court, also relying on Lewis, explained that "when an officer is able to make unhurried judgments with time to deliberate, such as in the case of a non-emergency, deliberate indifference is the applicable culpability standard for substantive due process claims involving driving decisions." Id. at 415 (citing Lewis, 523 U.S. at 853). The Fourth Circuit affirmed the district court's finding that "a reasonable jury could conclude that [the officer] violated [the plaintiff's] substantive due process right." Id. at 413.[5]

[5] Defendant argues that the Eighth Circuit's decision in Sitzes v. City of West Memphis Arkansas, 606 F.3d 461 (8th Cir. 2010), supports its position. The court disagrees. In Sitzes, the officer caused a collision while responding to a call that plaintiff argued was not factually an emergency, while defendant presented evidence that the officer subjectively believed it to be an emergency. Id. at 468. The Eighth Circuit rejected

Based on Lewis, Ninth Circuit precedent, and multiple on-point circuit decisions, the court concludes that the deliberate indifference standard applies to substantive due process claims premised on a police officer's driving in a non-emergency, non-pursuit context. See Lewis, 523 U.S. at 851, 853; Porter, 546 F.3d at 1139; Browder, 787 F.3d at 1080-81; Flores, 997 F.3d at 729; Dean, 976 F.3d at 415. Chief Judge Mueller of this court previously came to the same conclusion in a case that involved "no allegation of a high-speed chase rather only high-speed driving." See McGowan v. County of Kern, No. 1:15-cv-01365 KJM SKO, 2016 WL 159232, at *5 (E.D. Cal. Jan. 13, 2016) (explaining that if the officer "faced no true emergency and so had a practical opportunity to consider slowing for a red light and checking for other traffic," the plaintiffs could state a substantive due process claim "under a theory of deliberate indifference").

The court next considers whether plaintiff has sufficiently pled facts indicating that Taylor did not face an emergency and had time to deliberate on his actions such that he

---

plaintiff's arguments that the situation was not a true emergency and applied the intent to harm standard. It based its reasoning on prior Eighth Circuit precedent holding that "substantive due process liability turns on the intent of the government actor" and thus "forecloses inquiry into the objective nature of the emergency." Id. (citing Terrell v. Larson, 396 F.3d 975, 980 (8th Cir. 2005)). The Ninth Circuit does not appear to follow a similar rule. See Brittain v. Hansen, 451 F.3d 982, 991, 998 (9th Cir. 2006) (considering "objective reasonableness" of officer's conduct in analyzing substantive due process claim under "shocks the conscience" standard). As such, the reasoning in Sitzes is not persuasive.

At any rate, as discussed below, the facts as alleged by plaintiff suggest that Taylor did not subjectively believe the call to be an emergency. Thus, even if the court were to adopt the rule applied in Sitzes, the result here would be the same.

was deliberately indifferent. Here, plaintiff does not allege--and defendant does not argue--that the call was factually an emergency. Plaintiff alleges that the misdemeanor trespassing call was both described by the caller as a non-emergency and classified as a non-emergency by dispatch when communicating with the responding officers. (FAC ¶¶ 39, 41.) Dispatch did not tell Taylor that the call was an emergency, and the two other responding officers did not believe the call to be an emergency. (Id. ¶¶ 41-42.) Although Taylor stated that his conduct was justified by a need to catch up to the deputies he was backing up (id. ¶ 71), the facts as alleged by plaintiff suggest that he did not subjectively believe the call was an emergency; Taylor waited for approximately one minute at a stoplight while en route and did not follow the required protocols for responding on an emergency basis by failing to confirm the call's emergency status with dispatch and activate his lights and sirens. (See id. ¶¶ 53-57.)

Plaintiff alleges that approximately seven minutes elapsed between the time Taylor agreed to respond to the call and the time of the collision (see id. ¶¶ 43, 50), which tends to show that he had sufficient time to deliberate. See Dean, 976 F.3d at 416 (trier of fact could find that officer had "ample time to consider" his actions during two minutes and fifteen seconds that elapsed between notification that the call was not an emergency and the collision); Browder, 787 F.3d at 1082 (trier of fact could find that officer had adequate time to deliberate during eight minutes that elapsed between the time he started speeding and the collision). Taylor's conduct in waiting at a

stop light for nearly a minute while responding to the call further supports this inference. (See FAC ¶ 57.)

The court therefore finds that plaintiff has alleged facts tending to show that Taylor was facing a non-emergency situation in which he had time to deliberate on his actions. As such, plaintiff has sufficiently stated a substantive due process claim under a theory of deliberate indifference.

IT IS THEREFORE ORDERED that defendant County of Shasta's motion to dismiss (Docket No. 32) be, and the same hereby is, DENIED.

Dated: December 15, 2022

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE